

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, |) | CASE NO.: 1:18-CR-00473 |
| |) | |
| Plaintiff, |) | JUDGE JOHN R. ADAMS |
| |) | |
| v. |) | |
| |) | |
| JASON DAVON STOVALL, |) | <u>GOVERNMENT'S SENTENCING</u> |
| |) | <u>MEMORANDUM</u> |
| Defendant. |) | |

Now comes the United States of America, by and through its attorneys, Justin E. Herdman, United States Attorney, and Brian S. Deckert, Assistant United States Attorney, and hereby files this sentencing memorandum. The Government and Defendant entered into a plea agreement in this matter pursuant to Rule 11(c)(1)(B) in which the parties agreed to not recommend a sentence outside of the range specified in the agreement. For the following reasons, the Government is requesting a sentence at the high-end of the Guideline range of 18-24 months.

I. OFFENSE CONDUCT AND GUIDELINE CALCULATION

A. Offense Conduct

On January 24, 2018, the Ohio Lottery Commission (“OLC”) notified the Ohio State Highway Patrol (“OSHP”) of comments that were posted to the OLC’s Facebook page, threatening members of the “draw team”¹. One of the Facebook posts stated: “My 44. Will make sure ALL YOUR kids don’t grow.” A second post read: “Your staff will DIE. It’s gonna

¹ The draw team refers to the small team of individuals who appear on television and physically draw the lottery numbers.

be so funny when you f**kers get shot...". The remainder of the posts stated that members of the OLC will "die slow".

Beginning in March 2018, numerous threats were made to the draw team's Facebook accounts, as well as to the Facebook account of the OLC. The threats became increasingly aggressive in nature. All of the threats listed below originated from Facebook accounts under the names "Dave Yost" and "Terry Hadesty", however, Defendant posted from multiple fake Facebook profiles:

On June 28, 2018, at approximately 10:59 a.m., a Facebook account displaying the username "Dave Yost" posted to the OLC Facebook page: "The OHIO lottery hosts. [VICTIM1] [VICTIM2] ... Etc WE ARE GONNA KILL YOUR F**KING KIDS. Rig numbers get your f**king KIDS KILLED. Keep smiling thinking it's a game";

On June 28, 2018, at approximately 11:00 a.m., a Facebook account displaying the username "Dave Yost" posted to the OLC Facebook page: "I personally am gonna put a bullet in each one of them";

On June 28, 2018, at approximately 11:00 a.m., a Facebook account displaying the username "Dave Yost" posted to the OLC Facebook page: "Your kids are f**king dead understand";

On June 28, 2018, at approximately 11:00 a.m., a Facebook account displaying the username "Dave Yost" posted to the OLC Facebook page: "The OHIO lottery hosts. [VICTIM 1], [VICTIM 4] ... Etc WE ARE GONNA KILL YOUR F**KING KIDS. Rig numbers get you f**king KIDS KILLED. Keep.smiling thinking it's a game";

On July 2, 2018, at approximately 1:53 p.m., a Facebook account displaying the username “Dave Yost” posted to the OLC Facebook page: “Keep rigging numbers an we will keep adding up the body count. Report this to Facebook all u want. [VICTIM 1] u deserve to be raped an killed. [VICTIM 2] you’re a dead man walking”;

On July 2, 2018, at approximately 1:54 p.m., a Facebook account displaying the username “Dave Yost” posted to the OLC Facebook page: “Get shot in the head”;

On July 2, 2018, at approximately 1:54 p.m., a Facebook account displaying the username “Dave Yost” posted to the OLC Facebook page: “Who ever controls this website. Shut up. You employ a slut named [VICTIM 1]. An the black woman [VICTIM 3] who host mid drawings. Listen here I want to make sure you hear me. I’m gonna make sure all of your kids don’t make it to their teenage years.nasty whores”;

On July 2, 2018, at approximately 2:35 p.m., a Facebook account displaying the username “Dave Yost” posted to the OLC Facebook page: “Dirty ass j**² I’ll f**king erase her. Keep thinking we are not serious hoe. You’ll be tracked down. Watched an dealt with accordingly. You at home [VICTIM 1]. We are coming to check. Fireworks will cover up gun shots at your family don’t be outside for the fourth of july hoe”;

² “J**” is a derogatory term sometimes directed at children of the Jewish faith.

On July 5, 2018, at approximately 8:00 p.m., a Facebook account displaying the username “Terry Hadesty” posted to the OLC Facebook page: “Looks like a good place to dump [VICTIM 1] body off”;

On July 5, 2018, at approximately 8:00 p.m., a Facebook account displaying the username “Terry Hadesty” posted to the OLC Facebook page: “[VICTIM 1] family I wonder if u are full of whore like [VICTIM 1]. Your blood will be paved over Akron Ohio streets. Whore”;

On July 5, 2018, at approximately 8:00 p.m., a Facebook account displaying the username “Terry Hadesty” posted to the OLC Facebook page: “We have prices on the heads of the Ohio lottery hosts. Keep rigging numbers an we will keep picking out the family members of yours that are gonna be killed in the future”; and

On July 6, 2018, at approximately 11:05 a.m., a Facebook account displaying the username “Terry Hadesty” posted to the OLC Facebook page: “[VICTIM 1] what a whore. She will get what’s coming to her”.

A review of all of the social media posts containing threats, there were approximately 45 threats directed to VICTIM 1, 13 threats directed to VICTIM 2, 6 threats directed to VICTIM 3, and 7 threats directed to VICTIM 4. A search warrant was obtained for Defendant’s residence and Agents conducted an interview of Defendant. Defendant admitted to sending the posts and stated that he just was trying to scare the victims.

B. Guideline Calculation

Defendant was indicted on August 17, 2018, for four counts of Interstate Communications, in violation of 18 U.S.C. § 875(c). (R. 4, Indictment; PageID 16-17). On

April 30, 2019, Defendant pled guilty to the indictment after agreeing to the terms set forth in a plea agreement pursuant to Rule 11(c)(1)(B). (R. 32, Plea Agreement, PageID 153-63). The following is the relevant guideline calculations as correctly stated in the presentence report and plea agreement. (R. 36: PSR, PageID 188-90).

| Title 18 U.S.C. 875(c): Interstate Communications | | |
|--|-----------|---------------|
| Base offense level | 12 | § 2A6.1(a)(1) |
| Two or more threats | + 2 | § 2A6.1(b)(2) |
| Total Offense Level before Acceptance of Responsibility | 14 | |

Combined Offense Level

| | | |
|---|-----------|-------------------------|
| Highest offense level | 14 | § 3D1.4 |
| Count 2-4 do not group (Level 14, 4 units) | +4 | § 3D1.2(d), 3D1.4(a) |
| Subtotal Before Acceptance of Responsibility | 18 | |

Defendant has prior convictions for Domestic Violence involving threats and Engaging in Fighting, however, due to age and kinds of sentences no criminal history points score.

Defendant was placed in Criminal History Category I. An offense Level 15, after acceptance of responsibility, Criminal History Category I, results in a Guideline range of 18-24 months.

II. SENTENCING FACTORS 18 U.S.C. § 3553(a)

Upon properly calculating the advisory guideline range, this Court is required to follow 18 U.S.C. § 3553(a), which states:

This Court is required to consider the following factors in determining the sentence.

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(5) any pertinent policy statement--

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

The nature and circumstances of this offense militate in favor of a high-end range of the Guidelines. There has been two victim impact statements submitted in this case and the Government expects at least one will make a statement at the time of sentencing. The impact caused by Defendant upon the victims has been great and will undoubtedly continue in the future. The steps taken by the victims in response to Defendant's actions reveal the amount of terror that was inflicted upon them. A sentence of 24 months is the high-end of the Guideline range but is necessary to adequately punish Defendant for his crimes and takes into account the nature and circumstances of the offense conduct.

III. CONCLUSION

Based on the foregoing, the Government requests that this Honorable Court impose a sentence at the high end of range for his criminal history category, specifically 24 months.

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

By: /s/ Brian S. Deckert

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Brian S. Deckert

Brian S. Deckert

Assistant U.S. Attorney